

BILL ANALYSIS

Senate Research Center

H.B. 1024
By: Geren et al. (Hancock)
Business & Commerce
4/15/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prior to COVID-19, restaurants were prohibited from selling alcohol directly to consumers for off-premises consumption. As COVID-19 began to spread throughout Texas, Governor Abbott prohibited dine-in services at restaurants. To assist in restaurants recouping lost revenue, Governor Abbott waived certain regulations to permit restaurants to sell alcohol directly to consumers for off-premises consumption.

The bill makes permanent Governor Abbott's emergency waiver allowing restaurants to safely sell alcohol to-go. More specifically, restaurants with a mixed beverage permit and a food and beverage certificate from the Texas Alcoholic Beverage Commission will be able to sell beer, wine, and cocktails with food orders that are purchased for pickup or delivery, including through third-party delivery companies. The bill would also codify key safety provisions in the governor's waiver, including the requirement that all alcoholic beverages be sealed either in their original, manufacturer-sealed container, or in a tamper-proof container that is labeled with the business's name and the words "alcoholic beverage." Further, if an alcoholic beverage is not in its original container, it cannot be transported in the passenger area of a motor vehicle.

The bill permits private club registration permit holders to partake in alcohol to-go.

H.B. 1024 amends current law relating to the pickup and delivery of alcoholic beverages from certain premises for off-premises consumption.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 28.1001, Alcoholic Beverage Code, to read as follows:

Sec. 28.1001. PICKUP AND DELIVERY OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION.

SECTION 2. Amends Section 28.1001, Alcoholic Beverage Code, by amending Subsections (a), (c), and (d) and adding Subsections (a-1), (a-2), and (e), as follows:

(a) Defines "passenger area of a motor vehicle" and "tamper-proof container."

(a-1) Creates this subsection from existing text. Authorizes the holder of a mixed beverage permit, notwithstanding any other provision of this code, to deliver, or have delivered by a third party, including an independent contractor acting under Chapter 57 (Consumer Delivery Permit), as added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature, Regular Session, 2019, an alcoholic beverage from the permitted premises to an ultimate consumer located off-premises and in an area where the sale of the beverage is legal if:

(1) and (2) makes no changes to these subdivisions;

(3) the alcoholic beverage is:

(A) a malt beverage, rather than beer or ale, or wine delivered in:

(i) creates this subparagraph from existing text and makes no further changes; or

(ii) a tamper-proof container that is sealed by the permit holder and clearly labeled with the permit holder's business name and the words "alcoholic beverage"; or

(B) an alcoholic beverage other than a malt beverage, rather than beer or ale, or wine that:

(i) creates this subparagraph from existing text and makes nonsubstantive changes; or

(ii) the permit holder mixes with other beverages or garnishes and stores in a tamper-proof container that is clearly labeled with the permit holder's business name and the words "alcoholic beverage"; and

(4) makes a conforming change to this subdivision.

(a-2) Authorizes the holder of a mixed beverage permit, notwithstanding any other provision of this code, to allow an ultimate consumer to pick up an alcoholic beverage described by Subsection (a-1)(3) and remove the beverage from the permitted premises if the holder of the mixed beverage permit holds a food and beverage certificate for the permitted premises and if the pickup of the alcoholic beverage is made as part of the pickup of food prepared at the permitted premises.

(c) Authorizes an alcoholic beverage picked up or delivered, rather than delivered, under this section to be provided only to a person who is 21 years of age or older after the person picking up the alcoholic beverage or accepting the delivery, rather than accepting the delivery, presents valid proof of identity and age and:

(1) the person picking up the alcoholic beverage or accepting the delivery, rather than accepting the delivery, personally signs a receipt, which may be electronic, acknowledging the pickup or delivery; or

(2) the person providing the beverage for pickup or making the delivery, rather than making the delivery, acknowledges the completion of the pickup or delivery through a software application.

Makes conforming changes.

(d) Provides that this section does not authorize the holder of a brewpub license who also holds a wine and malt beverage retailer's permit, rather than a wine and beer retailer's permit, to deliver alcoholic beverages directly to ultimate consumers for off-premise consumption at a location other than the licensed premises.

(e) Prohibits a person who picks up or delivers an alcoholic beverage described by Subsection (a-1)(3)(A)(ii) or (a-1)(3)(B)(ii) from transporting the alcoholic beverage in the passenger area of a motor vehicle.

SECTION 3. Amends Section 32.01(a), Alcoholic Beverage Code, to provide that a private club registration permit authorizes alcoholic beverages belonging to members of the club to be

handled in certain ways, including served for off-premises consumption only to members of the club in the manner provided by Section 32.155. Makes nonsubstantive changes.

SECTION 4. Amends Section 32.15, Alcoholic Beverage Code, as follows:

Sec. 32.15. REMOVAL OF BEVERAGES FROM PREMISES. Prohibits a private club, irrespective of location or system of storage of alcoholic beverages, from permitting any person to remove any alcoholic beverages from the club premises, except:

(1) as authorized by:

(A) Section 28.10(b) (relating to exceptions to the prohibition for a mixed beverage permittee to permit any person to take any alcoholic beverage from the property) or 32.155, rather than Section 28.10(b); or

(B) Chapter 57, as added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature, Regular Session, 2019; or

(2) for the purpose of removing unused inventory the person brought onto the premises under certain sections, including Section 14.07 (Retailer Sampling), as added by Chapter 792 (H.B. 1997), Acts of the 86th Legislature, Regular Session, 2019.

Makes nonsubstantive changes.

SECTION 5. Amends Chapter 32, Alcoholic Beverage Code, by adding Section 32.155, as follows:

Sec. 32.155. PICKUP AND DELIVERY OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION. (a) Defines "passenger area of a motor vehicle" and "tamper-proof container."

(b) Authorizes the holder of a private club registration permit, notwithstanding any other provision of this code, to deliver, or have delivered by a third party, including an independent contractor acting under Chapter 57, as added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature, Regular Session, 2019, an alcoholic beverage from the permitted premises to an ultimate consumer located off-premises and in the county in which the private club is located if:

(1) the holder of the private club registration permit holds a food and beverage certificate for the permitted premises;

(2) the delivery of the alcoholic beverage is made as part of the delivery of food prepared at the permitted premises;

(3) the ultimate consumer is a member of the club;

(4) the alcoholic beverage is:

(A) a malt beverage or wine delivered in:

(i) an original container sealed by the manufacturer; or

(ii) a tamper-proof container that is sealed by the permit holder and clearly labeled with the name of the private club registration permit holder and the words "alcoholic beverage"; or

(B) an alcoholic beverage other than a malt beverage or wine that:

(i) is delivered in an original, single-serving container sealed by the manufacturer and not larger than 375 milliliters; or

(ii) the permit holder mixes with other beverages or garnishes and stores in a tamper-proof container that is clearly labeled with the name of the private club registration permit holder and the words "alcoholic beverage"; and

(5) the delivery is not made to another premises that is permitted or licensed under this code.

(c) Authorizes the holder of a private club registration permit, notwithstanding any other provision of this code, to allow an ultimate consumer to pick up an alcoholic beverage described by Subsection (b)(4) and remove the beverage from the permitted premises if:

(1) the holder of the private club registration permit holds a food and beverage certificate for the permitted premises;

(2) the pickup of the alcoholic beverage is made as part of the pickup of food prepared at the permitted premises; and

(3) the ultimate consumer is a member of the club.

(d) Authorizes an alcoholic beverage picked up or delivered under this section to be provided only to a person who is 21 years of age or older after the person picking up the alcoholic beverage or accepting the delivery presents valid proof of identity and age and:

(1) the person picking up the alcoholic beverage or accepting the delivery personally signs a receipt, which is authorized to be electronic, acknowledging the pickup or delivery; or

(2) the person providing the beverage for pickup or making the delivery acknowledges the completion of the pickup or delivery through a software application.

(e) Prohibits a person who picks up or delivers an alcoholic beverage described by Subsection (b)(4)(A)(ii) or (b)(4)(B)(ii) from transporting the alcoholic beverage in the passenger area of a motor vehicle.

SECTION 6. Amends Section 32.17(a), Alcoholic Beverage Code, as effective September 1, 2021, as follows:

(a) Authorizes the Texas Alcoholic Beverage Commission (TABC) or the administrator of TABC to cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has met certain criteria, including, except as authorized under Section 32.15 (Removal of Beverages from Premises), permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises.

SECTION 7. Amends Section 57.01(b), Alcoholic Beverage Code, as follows:

(b) Authorizes an alcoholic beverage to be delivered under Section 57.01 (Authorized Activities) only if the alcoholic beverage is sold or served, rather than if the alcoholic beverage is sold, to the ultimate consumer by the holder of certain permits, including a

private club permit authorized to deliver alcoholic beverages under Section 32.155.
Makes nonsubstantive changes.

SECTION 8. Effective date: upon passage or September 1, 2021.